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No. 95-1600

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

CENTRA, INC.; CAN-AM INVESTMENTS, LTD.; AMMEX, INC.; DURAROCK UNDERWRITERS, LTD. and MANUEL J. MOROUN,

Petitioners,

vs.

CHANDLER INSURANCE COMPANY, LTD.; CHANDLER INSURANCE (BARBADOS), LTD.; CHANDLER (U.S.A.), INC.; NATIONAL AMERICAN INSURANCE COMPANY; CHANDLER AVIATION, INC.; NEBRASKA DEPARTMENT OF INSURANCE and DEAN WITTER TRUST, INC.,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Nebraska

RESPONDENTS' BRIEF IN OPPOSITION

WILLIAM M. LAMSON, JR.
MICHAEL DUGAN
KENNEDY, HOLLAND, DELACY & SVOBODA
Kennedy Holland Building
10306 Regency Parkway Drive
Omaha, NE 68114
(402) 397-7824

KENNETH N. McKINNEY
Counsel of Record
ROBERT L. ROARK
MARY E. NELSON
McKINNEY, STRINGER & WEBSTER, P.C.
101 North Broadway
Suite 800
Oklahoma City, OK 73102
(405) 239-6444

Attorneys for Respondents

8790
Lutz Appellate Services, Inc.
(800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21

72pp

QUESTIONS PRESENTED FOR REVIEW

The Petitioner frames four issues for review which mischaracterize the issues determined by the courts below and are duplicative. There are just two issues which could be presented for review.

1. When an entity has illegally purchased stock to control a domestic insurance company without the prior approval required by state insurance law, and that approval is later denied, may a state insurance regulator monitor the entities' disposition of the stock, to ensure that control illegally acquired is not surreptitiously maintained?

2. Is the requirement of preapproval of the disposition of illegally acquired stock including the identity of a subsequent purchaser "the business of insurance" under the McCarren-Ferguson Act such that it is protected from the application of the Commerce Clause or otherwise a permissible burden on interstate commerce?

PARTIES INVOLVED

The Petitioner includes in the style of the case as a Respondent Chandler Aviation, Inc. Chandler Aviation, Inc. is not disclosed as an adverse party pursuant to Rule 14.1(b). Chandler Aviation, Inc. was not a party to any of the underlying actions, either before the Nebraska Department of Insurance, the District Court of Lancaster County, State of Nebraska or the Nebraska Supreme Court. It is not a proper party to this Petition for Writ of Certiorari. Likewise, Dean Witter Trust, Inc. named as a Respondent was not a party to any of the underlying actions. It is included both in the style of the case and in the disclosures made pursuant to Rule 14.1(b). However, it is not a proper party to this Petition for Writ of Certiorari.

TABLE OF CONTENTS

	Page
Questions Presented for Review	i
Parties Involved	ii
Table of Contents	iii
Table of Citations	iv
Statutes Involved	1
Statement of the Case	3
Reasons for Denying the Writ	17
I. Petitioners' Enumerated Grounds For Writ of Certiorari Do Not Support Granting the Petition.	17
A. The Decision of the Nebraska Supreme Court Is Not Contrary to Existing Supreme Court Precedent.	17
B. The Decision of the Nebraska Supreme Court Does Not Usurp Federal Securities Regulation.	24
C. Nothing in the *Barnett Bank* Decision Affects the Nebraska Supreme Court's Decision.	26
Conclusion	28

Page

TABLE OF CITATIONS

Cases Cited:

Allegheny Corporation v. Pomeroy, 898 F.2d 1314 (8th Cir. 1990) 17

Barnett Bank of Marion County v. Nelson, __ U.S. __, 116 S. Ct. 1103, __ L. Ed. 2d __ (1996) 26, 27

Edgar v. MITE Corporation, 457 U.S. 624, 102 S. Ct. 2629, 73 L. Ed. 2d 269 (1982) 23, 24, 25

Group Life & Health Insurance Company v. Royal Drug Company, 440 U.S. 205, 99 S. Ct. 1067, 59 L. Ed. 2d 261 (1979) 18, 20, 21, 22

Hoylake Investments Limited v. Bell, 723 F. Supp. 576 (D. Kan. 1989) 17

Hoylake Investment Limited v. Gallinger, 722 F. Supp. 573 (D. Ariz. 1989) 17

Hoylake Investments Limited v. Washburn, 723 F. Supp. 42 (N.D. Ill. 1989) 17

Pike v. Bruce Church, Inc., 397 U.S. 137, 90 S. Ct. 844, 25 L. Ed. 2d 174 (1970) 22, 23

SEC v. National Securities, Inc., 393 U.S. 453, 89 S. Ct. 564, 21 L. Ed. 2d 668 (1969) ... 15, 18, 19, 20, 21, 22, 25, 26

Contents

Page

Union Labor Life Insurance Company v. Pireno, 458 U.S. 119, 102 S. Ct. 3002, 73 L. Ed. 2d 647 (1982) . 18, 20, 21, 22

United States Department of Treasury v. Fabe, 508 U.S. 491, 113 S. Ct. 2202, 124 L. Ed. 2d 449 (1993) 18, 20, 21, 22

Statutes Cited:

15 U.S.C. §§ 77a-77zzz 23

15 U.S.C. §§ 78a-78jjj 23

15 U.S.C. § 1012(b) 1, 20, 21, 26, 27

Neb. Rev. Stat. § 44-2120 *et seq.* 5

Neb. Rev. Stat. § 44-2121(2) 1

Neb. Rev. Stat. § 44-2126(1) 2

Neb. Rev. Stat. § 44-2127(1)(c) 3

Neb. Rev. Stat. § 44-2127(1)(e) 3

Neb. Rev. Stat. § 44-2127(1)(f) 3

Neb. Rev. Stat. § 44-2142 3

Rule Cited:

SEC Rule 10b-5 18

Contents

Page

APPENDIX

Appendix A — Departmental Correspondence Dated June 12, 1987 ..... 1a

Appendix B — Letter to David G. McLane from N.E. Harned and R.W. Lech Dated June 18, 1992 ..... 4a

Appendix C — Letter to Jeanette Smith from Hans H.J. Pijls Dated June 24, 1992 ..... 6a

Appendix D — Letter to Jeanette M. Smith from J. Michael Gottschalk Dated June 29, 1992 ..... 8a

Appendix E — Letter to Mr. Brent LaGere from R.W. Lech Dated July 1, 1992 ..... 11a

Appendix F — Letter to Chandler (U.S.A.), Inc. Attn: Mr. Brent LaGere from R.W. Lech Dated July 2, 1992 ... 12a

Appendix G — Letter to National American Insurance Company Attn: Mr. Brent LaGere from R.W. Lech Dated July 2, 1992 ..... 14a

Appendix H — Press Release Dated July 6, 1992 ..... 16a

Appendix I — Letter to J. Michael Gottschalk from Jeanette M. Smith Dated June 30, 1992 ..... 18a

Appendix J — Order and Notice of Hearing Filed July 10, 1992 with Exhibits Attached 20a

Appendix K — Certificate of Incorporation 37a

STATUTES INVOLVED

The McCarren-Ferguson Act provides, in pertinent part:

> No act of Congress shall be construed to invalidate, impair or supersede any law enacted by any state for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such act specifically relates to the business of insurance. . . .

15 U.S.C § 1012(b).

The Nebraska Insurance Holding Company System Act provides in pertinent part:

> (2) Control . . . shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management policies of a person, whether through the ownership of voting securities . . . or otherwise. . . . Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person.

Neb. Rev. Stat. § 44-2121(2) (Petition, A. 62).

The Nebraska Insurance Holding Company System Act provides in pertinent part:

> (1) No person other than the issuer shall make a tender offer for or a request or

> invitation for tenders of or enter into any agreement to exchange securities for, seek or acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would directly or indirectly . . . be in control of such insurer . . . unless, at the time of such offer . . . such person has filed with the director and . . . such offer, request, invitation, agreement or acquisition has been approved by the director. . . .

Neb. Rev. Stat. § 44-2126(1) (Petition, A. 68).

The Nebraska Insurance Holding Company System Act provides in pertinent part:

> (1) The director shall approve any merger or other acquisition of control referred to in subsection (1) of section 44-2126 unless, after a public hearing thereon, he or she finds that: . . .
>
> (c) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of policyholders of the insurer; . . . .
>
> (e) The competence, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; . . . .

> (f) The acquisition is likely to be hazardous or prejudicial to the public.

Neb Rev. Stat. §44-2127(1)(c), (e) and (f). (Petition, A. 73-74).

The Nebraska Insurance Holding Company System Act provides in pertinent part:

> Seizure or sequestration of voting securities. In any case when a person has acquired or is proposing to acquire any voting securities in violation of the Insurance Holding Company System Act . . . the district court of Lancaster County may, on such notice as the court deems appropriate, upon the application of the insurer or the director seize or sequester any voting securities . . . and issue such order with respect thereto as may be appropriate to effectuate the act.

Neb Rev. Stat. § 44-2142. (Petition, A. 91).

STATEMENT OF THE CASE

There has been no assault on interstate commerce, the commerce clause or the federal government's power to regulate securities by virtue of the Nebraska Supreme Court's decision reported at 248 Neb. 844, 540 N.W.2d 318 (1995). Rather, the Nebraska Supreme Court properly applied the existing precedent to the specific facts of this case. The result is limited to the facts before the Nebraska Supreme Court and thus has no far reaching implications. Moreover, the result sought by Petitioners would abolish the power of the Nebraska Insurance Department ("Department") to regulate the ownership of domestic insurance companies, a power this Court has

recognized and approved as protected under the McCarran-Ferguson Act ("MFA") since 1969.

The purpose of the Department's Order is to address the problem which arose when Petitioners illegally acquired stock in Chandler Insurance Company, Ltd. ("Chandler") in order to control its insurance subsidiary, National American Insurance Company ("NAICO"). The Department's Order did not "suspend trading" of Chandler stock as boldly claimed by Petitioners. The plain language of the Nebraska Supreme Court's decision highlights the need for the actions ordered with respect to the stock for the protection of the policyholders:

> [T]he conduct of those entities [the Petitioners] in this litigation triggers legitimate concern that the only way for the department to protect NAICO policyholders is to retain jurisdiction over this matter and monitor applicants' disposition of their Chandler stock. . . . That the applicants broke the law is so clear that the applicants do not even raise an objection to that finding. . . .
>
> . . . Applicants' unapologetic disregard for Nebraska law raises the specter of future disregard for the interests of NAICO policyholders. . . . [T]he director may issue the necessary protective orders until the policyholders' interests are no longer jeopardized by outlaw corporate raiders.

(Petition, A. 14-17).

The transaction which is the subject of this Petition and the

preceding actions has everything to do with the business of insurance. The Nebraska Insurance Holding Company System Act, Neb. Rev. Stat. §44-2120 *et seq.* provides that the Director shall approve changes in control of a Nebraska insurance company unless he finds the potential purchaser unfit. This function is directly related to the protection of policyholders by assuring that the assets of an insurance company are not raided, rendering the policies issued to the policyholders worthless.

It is this function which is at issue in this case. In spite of Petitioners' claim that this case simply involves the denial of an ordinary application for approval of acquisition of control of a Nebraska insurance company by a presumptively innocent group of would-be stockholders, the truth of the matter is quite the contrary. In the summer of 1992, CenTra's interest in controlling NAICO, its insurance carrier, led to a three-day buying spree of Chandler stock by the Petitioners. This resulted in a hearing, known as a Form A Hearing, before the Nebraska Insurance Department ("Department") to determine whether the Petitioners (called the Applicants before the Department) were fit to control NAICO.[1] Thus, the issues in this case relate to the Petitioners' long-standing desire for control of NAICO and the Department's ability to regulate that control for the protection of the policyholders, not the usurpation of the federal regulation of securities, the imposition of restrictions on the trading of stock or cessation of trading of stock as asserted by Petitioners.

In conjunction with its initial purchase of Chandler stock, CenTra, Inc. ("CenTra") determined that it would be in its best

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1. It is important to note that while the Petitioners imply that the stock of Chandler, the ultimate parent of NAICO, is somehow not subject to the Nebraska Act, the Petitioners have never before challenged the Nebraska Insurance Department's right to regulate the ownership of NAICO by regulating the ownership of Chandler, the Holding Company. Thus, the Petitioners implied argument comes too late.

interest to have a "**controlled or at least influenced**" fronting insurance company. (Resp. 1a-2a). A controlled fronting company was felt to be important because CenTra feared that in the future there would be only a limited market for insurance fronting arrangements.[2] In fact, not only did CenTra want control of the company for its fronting arrangements, but it also wanted to directly control its own claims.

In late 1991, Chandler began considering a company self-tender to convert the publicly traded company to a privately held one. While the Petitioners seek to cast the going-private transaction as something sinister, they were participants in the negotiation of the transaction. Indeed, during the negotiations of the going-private transaction, the Petitioners sought concessions in the Articles of Incorporation which would have resulted in their control of the new private company.

Ultimately, the tender offer proceeded without CenTra. Armed with information gained through the going-private negotiations, and inside information from the boardroom, CenTra advised its broker (Dean Witter) to buy additional Chandler stock until it owned 49% of Chandler's outstanding shares — effectively thwarting the tender offer and gaining control of NAICO. Although the Petitioners characterize these actions as necessary to stop the going-private transaction, they consistently fail to mention that the fairness of the transaction could have been determined by bringing suit over that issue (something the Petitioners did eventually do by bringing suit in the United States Court for the Western District of Oklahoma).

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2. Under a typical fronting arrangement, a licensed or admitted insurance company issues policies to an insured and then cedes the bulk of the risk to a non-admitted reinsurance company which is owned by or affiliated with the insured. Thus, the insured can control claims while at the same time securing an income tax deduction for premiums paid to the "fronting insurer".

CenTra's action to block the tender offer began on June 18, 1992 when two of CenTra's officers who sat on Chandler's Board of Directors, Norman Harned and Ronald Lech, requested a list of shareholders from Chandler. (Resp. App. 4a-5a). On June 24, 1992, Hans J. Pijls of Plunkett & Cooney, one of CenTra's counsel, wrote to the Department about the requirements to increase ownership in a Nebraska domiciled insurance company. (Resp. App. 6a-7a). On June 29, 1992, Michael Gottschalk of Kutak Rock, another of CenTra's counsel, sought documents from the Department regarding CenTra's ownership status. (Resp. App. 8a-10a). As early as July 1 and 2, 1992, CenTra made offers to acquire pledged shares and stock held by Chandler entities. (Resp. App. 11a-15a). On July 6, 1992, a press release revealed that CenTra had a tentative agreement to purchase 169,858 Chandler shares held by Cactus Southwest Corporation. (Resp. App. 16a-17a). This prompted Chandler to notify the Department of CenTra's unapproved attempt to gain control of Chandler (and thus NAICO).

Neither CenTra's private warning from the Department's counsel to discontinue its attempt to gain control of NAICO (Resp. App. 18a-19a), nor the formal Cease and Desist Orders issued July 7, July 8 and July 10, 1992 by the Department (Resp. App. 20a-36a), deterred CenTra from its determination to gain control of Chandler and its fronting arrangement. The Department's first Cease and Desist Order directed **CenTra** to cease and desist buying **NAICO** stock until a Form A Application had been **filed and approved**. (Resp. App. 31a-34a). The next day, July 8, 1992, the Department corrected its Order that **CenTra** was to cease and desist buying **Chandler** stock. (Resp. App. 35a-36a). Although fully aware of the Department's Order to stop purchasing stock, the Applicants nonetheless continued purchasing Chandler shares. On July 9, 1992, **M.J. Moroun** personally made an offer to purchase Chandler stock from Cactus Southwest Corporation. (Previously **CenTra** had made

this offer but now had been ordered by the Department to stop buying stock.) On July 9, 1992, **M.J. Moroun** personally instructed Dean Witter to commence open market purchases of Chandler stock. On July 9, 1992 Dean Witter purchased 358,600 shares of Chandler stock on the account of **Manuel J. Moroun, trustee**. Although the Department had ordered **CenTra** to cease purchasing, **Moroun**, the owner of 49% of CenTra stock and ultimate controlling person of CenTra, continued those purchases.

On Friday, July 10, 1992 the Department revised its order in the face of M. J. Moroun's continued purchase of shares. The Department ordered **CenTra, Inc., R.W. Lech, M.J. Moroun and Norman E. Harned** to cease and desist "from any and all attempts to acquire or purchase, conditionally or otherwise, directly by CenTra or indirectly by its affiliates, or in any other manner acquire or attempt to acquire control of NAICO until the Director has approved the matter as required by law." (Resp. App. 20a-36a). **That same day M.J. Moroun** offered to purchase Chandler stock from the Universal Insurance Group. Dean Witter continued open market purchases under the name of **Norman E. Harned**. On Monday, July 13, 1992, Dean Witter continued purchasing Chandler stock but this time in the name of **Can-Am Investments, Ltd.** ("Can-Am"). The Nebraska Insurance Department ordered the Petitioners to file an application for change in control known as a Form A application.

Can-Am was incorporated by M. J. Moroun using CenTra employees and retirees, CenTra upper management and Moroun's father-in-law as purported shareholder "investors." However, these "independent" investors were not even approached to invest in Can-Am until early August — a month **after** the corporation had been formed and the purchases of Chandler stock had been completed. The shareholders of Can-Am gave sworn testimony by deposition some two and

one-half months after the purchases of Chandler stock ceased and shortly before the Department hearing. The testimony of Robert Berquist, Moroun's father-in-law and a director of Can-Am, best illustrates the total lack of knowledge and interest the supposedly independent investors have in their investment:

- He did not know what securities Can-Am would invest in;
- He did not pay his capital contribution until his deposition;
- He did not know whether the other shareholders had paid;
- He did not know of any shareholders meetings;
- He did not know when Can-Am was formed;
- He did not know where Can-Am was incorporated;
- He had not seen any articles or bylaws for Can-Am;
- He had not seen any minutes of any meetings;
- He had not seen any financial information on Can-Am;
- He did not know whether Can-Am had any assets;

- He did not know if Can-Am had any liabilities;

(Petition, A. 16). Although Can-Am commenced purchases on July 13, 1992, it was not even formally incorporated until the next day, July 14, 1992 (Resp. App. 37a). By July 13, 1992, Applicants had amassed ownership of 49.2% of Chandler's shares.[3]

The Department conducted the Form A hearing for five days in October of 1992. Applicants' request for control was denied. The Director held that three of the disqualifying conditions were present:

> (1) that the financial condition of the acquiring party is such as might jeopardize the financial stability of NAICO or **prejudice the interest of the policyholders** of the insurer,
>
> (2) that the competence, experience and integrity of the acquiring parties who would control the operation of NAICO are such that **it would not be in the interest of the policyholders** or NAICO or the public to permit the acquisition. and
>
> (3) that the acquisition is likely to be hazardous or prejudicial to the public.

(Petition, A. 46).

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3. Petitioners' professed interest in assuring federal regulation of securities is interesting. At no time during the purchase of the Chandler securities during July 1992 did the Petitioners attempt to comply with the Williams Act. Indeed, they have continuously asserted that the Williams Act did not apply to their purchases.

In support of these findings, the Department found that the Petitioners were having cash flow problems and were in desperate need of cash. Moreover, the working capital of the Petitioners was greatly overstated and misleading. Indeed, CenTra had characterized at least one investment (its investment in Chandler stock) as "short term" to its accountants for the purpose of including it in working capital after characterizing it as "long term" to the Department for purpose of the Form A proceeding. DuraRock, CenTra's reinsurance subsidiary used in its fronting arrangement with NAICO, also had monetary problems. Testimony indicated that DuraRock's financial statements were likewise misstated and inflated. Further, the evidence showed that CenTra was operated as Moroun's "personal bank account." (Petition, A. 33-38).

Moreover, the Department found the Applicants had gone to great effort and expense to elude off-shore regulatory oversight and had failed to exhibit the degree of public trust necessary to control a Nebraska domestic insurance company. (Petition, A. 38, 41). This called into question the competence, experience and integrity of the Applicants. CenTra flouted the regulatory authority of both the Barbados Supervisor of Insurance, which regulated DuraRock, and the Department, which regulated NAICO. Despite repeated communications with the Department which clearly informed the Petitioners that approval of control was necessary **prior to** the purchase of stock, the Petitioners went ahead with their purchase plan without approval and in violation of the cease and desist orders. The Petitioners' own expert acknowledged that the violation of the cease and desist order might reflect on an applicant's integrity. (Petition, A. 41-42).

This conduct of CenTra before the Department led to the decision which CenTra argues violates the commerce clause, "usurps" the federal securities laws and "suspends trading" of

Chandler stock. The decision does none of this. Instead, the decision specifically addresses only the Chandler stock illegally held by Petitioners.[4] Since the Petitioners exhibited a propensity to ignore the orders of the Department and used straw men to indirectly accomplish what they could not do directly, the Department had to maintain control over the stock to insure that the Petitioners did not continue their illegal control by merely selling their stock in increments less than 10% to entities which they controlled. This order is directed at the "business of insurance" because it is aimed at the protection of the policyholders by regulating the persons in control of NAICO. This Order was necessitated by two unique facts in this case:

1. The fact that the Applicants had shown a propensity to ignore Department orders and use multifarious means to circumvent regulatory compliance, and

2. That Applicants had purchased the stock without **prior** regulatory approval as required by the statute, thus necessitating continued jurisdiction regarding the disposition of the stock.[5]

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4. The ownership is illegal since control has been denied. The order was not entered by the Department sua sponte as indicated in the Petitioners Brief. Rather, the inclusion of the provision that CenTra should not dispose of its stock without prior approval of the Department was the continuation of a previously existing order which sought to maintain the status quo during the pendency of the action. The parties jointly sought and obtained this prior order.

5. If the Petitioners had sought approval before the purchase as required by the Nebraska Act, there would have been no need for this Order because when control was denied, there would be no stock to divest. Thus, the Order cannot be said to have far-reaching effect. In the normal situation there would be no need for an order of this kind. This conduct led the Nebraska Supreme

(Cont'd)

The decision does not offend the Constitution as alleged by Petitioners. Nor does it have far reaching affects. It is narrowly tailored to deal with the issue before the Department.

The District Court of Lancaster County, on a *de novo* review of the record, affirmed not only that the Petitioners were unfit to control NAICO but also that the decision was proper. The District Court noted that the Petitioners had not sought prior approval and that "for the Department to effectively carry out the purpose of the statute, it must have authority to handle situations of persons who purchase stock without prior approval." (Petition, A. 52). The purpose of the Nebraska Insurance Holding Company System Act ("Nebraska Act") was expressly found to be the "business of insurance": "The purpose of the Act is to protect the policyholders by probing the competence of those seeking to control insurance companies." (Petition, A. 52).

Similarly, the Nebraska Supreme Court held that the Department had the authority under the Nebraska Act and that the decision did not offend the commerce clause:

> The district court in this case found that the purpose of the Act is 'to protect the policyholders by probing the competence of those seeking to control insurance companies.' We agree with this finding. . . .
>
> With respect to the 'evils and mischiefs sought to be remedied' the Director of Insurance was presented with both a unique risk that NAICO policyholders could be

(Cont'd)
Court to conclude that the Director had the power under the Act to take appropriate action until policyholders' interests were no longer jeopardized by "outlaw corporate raiders". (Petition, A. 17).

subjected to needless prejudice by virtue of CenTra's acquisition and a **unique** opportunity to protect those policyholders . . . .

Beyond the problems experienced by Moroun entities in the past, however, the conduct of those entities in this litigation triggers legitimate concern that the only way for the department to protect NAICO policyholders is to retain jurisdiction over this matter and monitor applicants' disposition of their Chandler stock. No party may acquire statutory control of an insurer without department approval, yet the applicants boldly disregarded this very clear prohibition by amassing nearly five times that amount of stock specified for statutory control. That the applicants broke the law is so clear that the applicants do not even raise an objection to that finding. Even when the director issued his first cease and desist order, applicants unhesitatingly circumvented that order by creating a sham corporation, pausing not even long enough to explain to the sham corporation's new directors what its purpose would be . . . .

. . . Applicants unapologetic disregard for Nebraska law raises the specter of future disregard for the interests of NAICO policyholders. Accordingly, we find that the director should not be impeded in his choices of remedy and protective measures by the enumerated powers of the [Nebraska

Insurance Holding Company System] Act.

(Petition, A. 14-16).

It is against this backdrop that the Constitutional challenges raised by the Petitioners were addressed. While the Petitioners allege that they have previously asserted that the decision interferes with the federal securities laws and thus is violative of the Constitution, the Petitioners have never identified with which aspect of the securities laws the decision interferes. Indeed, the main issue briefed before the District Court of Lancaster County and the Nebraska Supreme Court was whether the decision related to "the business of insurance" and thus was exempted from federal regulation and the commerce clause by the MFA, or was otherwise an impermissible burden on interstate commerce.

In reaching its conclusion, the Nebraska Supreme Court relied upon *SEC v. National Securities, Inc.*, 393 U.S. 453, 89 S. Ct. 564, 21 L. Ed. 2d 668 (1969) for its analysis of the MFA issue. Consistent with this precedent, it held that since the Order and the Act from which it emanated were concerned with the protection of the policyholders, the Order involved the business of insurance and was thus preempted from the indirect application of the Commerce Clause by the MFA. The Supreme Court of Nebraska concluded that the Order did not usurp the federal securities laws as argued by the Petitioners here:

> This is not an instance of the department reaching out to invade the stock market. Rather, it was the applicants who wished to control the handling of CenTra's insurance claims; it was applicants who sought to gain control of their insurer by owning stock; and it was applicants who chose to cast into

> jeopardy the one policy concern for whose protection the Department was created: that an insurer should remain as reliable as it promises its insureds it will be. The director has not intruded into securities regulation. If anything, it is applicants who have intruded impermissibly into insurance regulation. The [Nebraska Insurance Holding Company System] Act affects entities outside the insurance industry only insofar as those entities choose to enter this rightly regulated arena.

(Petition, A. 21-22). Neither did the Nebraska Supreme Court agree that the Department's order "suspended trading" of Chandler securities: "Moreover the order is not an outright prohibition of stock sales by applicants, but only a prior-approval requirement: The order impedes applicants from nothing except skating around department authority." (Petition, A. 25).

Petitioners' hyperbole cannot alter the fact that the decision from which review is sought is narrowly tailored to the unique circumstances before the Department. What the Petitioners seek is nothing less than to render Nebraska incapable of regulating the ownership of insurance companies. Under Petitioners theory, a company could purchase stock without seeking prior approval, be denied the right to control, and leave the Department unable to regulate the disposal of the stock. Under this scenario, an unapproved purchaser would be free to dispose of illegally acquired stock to a straw man, and thereby always stay one jump ahead of the Department. The laws of Nebraska and of the United States do not permit such an absurd result.

REASONS FOR DENYING THE WRIT

I.

PETITIONERS' ENUMERATED GROUNDS FOR WRIT OF CERTIORARI DO NOT SUPPORT GRANTING THE PETITION.

The Petitioners set forth three bases for this Court to grant Certiorari. None is meritorious. The arguments of the Petitioners ignore the factual basis for the Order and for the Nebraska Supreme Court's decision to uphold that Order and, instead, overstate the effect of the decision by claiming it causes the cessation of trading of Chandler stock. Nothing could be further from the truth. A review of the decision of the Nebraska Supreme Court clearly reveals that not only is the Order addressed to the "business of insurance", but it is narrowly tailored to the unique facts of this case. It simply does not have the far-reaching effects argued by Petitioners. The Petition should be denied.

A. The Decision of the Nebraska Supreme Court Is Not Contrary to Existing Supreme Court Precedent.

The first ground upon which the Petitioners seek a Writ of Certiorari is that the decision of the Nebraska Supreme Court is in conflict with decisions of the United States Supreme Court, state courts and Courts of Appeals. The Petitioners cited no state court cases or cases from any of the Federal Courts of Appeals which hold contrary to the Nebraska Supreme Court.[6] Nor do the

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6. Indeed, the only lower court cases the Respondents could locate were in accord with the holding of the Nebraska Supreme Court. *See Hoylake Investments Limited v. Gallinger*, 722 F. Supp. 573 (D. Ariz. 1989); *Hoylake Investments Limited v. Bell*, 723 F. Supp. 576, 578 (D. Kan. 1989); *Hoylake Investments Limited v. Washburn*, 723 F. Supp. 42 (N.D. Ill. 1989). *See also* dissent in *Allegheny Corporation v. Pomeroy*, 898 F.2d 1314 (8th Cir. 1990).

Petitioners cite a single United States Supreme Court case which is factually similar and holds contrary to the Nebraska Supreme Court. This is because no case has ever been decided that deals with the issues addressed by the Nebraska Supreme Court, primarily because, to the best of Chandler's knowledge, no other party has so blatantly ignored cease and desist orders of an insurance department coupled with the plain meaning of the Insurance Holding Company System Act. The Petitioners are left with the argument that the Nebraska Supreme Court's decision is inconsistent with existing general precedent of this Court. Their argument is without merit and misconstrues this Court's opinions.

The seminal case on Insurance Holding Company Acts and the commerce clause is *SEC v. National Securities, Inc.*, 393 U.S. 453, 89 S. Ct. 564, 21 L. Ed. 2d 668 (1969). Since that decision, the court has addressed the definition of "the business of insurance" for the purposes of the MFA in *Group Life & Health Insurance Company v. Royal Drug Company*, 440 U.S. 205, 99 S. Ct. 1067, 59 L. Ed. 2d 261 (1979), *Union Labor Life Insurance Company v Pireno*, 458 U.S. 119, 102 S. Ct. 3002, 73 L. Ed. 2d 647 (1982) and *United States Department of the Treasury v. Fabe*, 508 U.S. 491, 113 S. Ct. 2202, 124 L. Ed. 2d 449 (1993). None of these later cases reject the analysis in *National Securities*.

The holding of the Supreme Court in *SEC v. National Securities Inc.*, 393 U.S. 453, 89 S. Ct. 564, 21 L. Ed. 2d 261 (1969), which is relied upon by Petitioners, does not support the decision they seek. In *National Securities* the Arizona Insurance Commissioner approved a merger which the SEC sought to set aside for violation of SEC Rule 10b-5. The Arizona Insurance Commissioner made three findings pursuant to the Arizona Insurance Holding Company Act: (1) that the merger was not inequitable to the **stockholders**; (2) that its was not otherwise contrary to law; and (3) the merger would not substantially

reduce the security of service to the **policyholders**. **Only** that part of the Act which focused on the merger's effect on the stockholders was under attack. The Supreme Court found the MFA exempted from SEC scrutiny only those actions considered the "business of insurance". Thus, the Court concluded that the part of the statute aimed at **protecting the interests of stockholders** of insurance companies was not regulating insurance. 393 U.S. at 457. Its holding was expressly limited to the facts of the case before it. *Id.* at 462.

National Securities does not mean, however, that all aspects of the Insurance Holding Company System Act or orders promulgated thereunder concerning ownership or control of an insurance company are outside the scope of the MFA. Indeed, in *National Securities* the Court stated that the section of the statute which gave the Insurance Director the power to determine whether the securities transaction was in the best interest of the **policyholders** clearly related to the "business of insurance". *Id.* at 462. In this regard, the Supreme Court held that in defining the "business of insurance" the focus should be on the relationship of the insurer and insured and the **reliability** of the insurer. "Statutes aimed at protecting or regulating this relationship, directly or indirectly, are laws regulating the 'business of insurance'." *Id.* at 460.

In the instant case, the Department's Order focused on protecting the policyholder by insuring the reliability of the insurer. Since the focus of the Department's Order is the continued protection of the **policyholders** and viability of NAICO by insuring proper disposition by the disapproved Applicants of their illegally acquired stock, the Order relates to the business of insurance and is protected from the broad reach of the commerce clause. This is precisely the part of the *National Securities* case which was relied upon by the Nebraska Supreme Court to reach its decision that the Order dealt with "the business

of insurance" and was thus exempted from the application of federal regulation by the MFA. (Pl. A. at 22). No case decided by the Supreme Court since *National Securities* has rejected its analysis.

Indeed, in a very recent interpretation of "the business of insurance" under the first clause of Section 2(b) of the MFA, the Court relied upon the analysis of *National Securities*. In *United States Department of the Treasury v. Fabe*, *supra*, this Court addressed whether a state priority statute in insurance insolvency proceedings was preempted by the federal priority statute. The District Court had granted summary judgment for the United States relying upon the three part test set out in *Union Labor Life Insurance Company v Pireno*, 458 U.S. 119, 102 S. Ct. 3002, 73 L. Ed. 2d 647 (1982). The Court of Appeals in applying the *Perino* test reversed the District Court. This Court began its analysis with *National Securities*. The Court noted that it had previously held that statutes "aimed at the protecting or regulating this relationship [between insurer and insured], directly or indirectly are laws regulating the business of insurance." *Fabe*, 113 S. Ct at 2208. Reliability was a fundamental part of the relationship between the insurer and insured. The *Fabe* Court then drew the same distinction as drawn by the Nebraska Supreme Court -- that the *National Securities* Court had held that only the part of the statute aimed at reviewing the transaction for the benefit of the security holders was invalid; **the section aimed at reviewing the stock transaction for the protection of the policyholder was valid.**

Moreover, the Petitioner in *Fabe*, like the Petitioners herein, sought to minimize this holding of *National Securities* and rely on the *Perino* and *Group Life & Health Insurance Company v. Royal Drug Company*, 440 U.S. 205, 99 S. Ct. 1067, 59 L. Ed. 2d 261 (1979) tests. The *Fabe* Court noted that *Perino* should not be read so narrowly to find that the "'business of insurance" is

confined entirely to the writing of insurance contracts as opposed to their performance." *Id.* at 2209. Rather, *Perino* and *Royal Drug* held only that ancillary activities which do not affect performance or enforcement of the insurance contract do not enjoy the antitrust exemption under the MFA.[7] The *Fabe* Court stated, "There can be no doubt that the actual performance of an insurance contract falls within the "business of insurance," as we understood that phrase in *Perino* and *Royal Drug*." *Id.* This is so because without performance of the insurance contract there is no risk transfer at all. Moreover, the performance of the contract is central to the policy relationship between insurer and insured and is confined to entities within the insurance industry. Since the Ohio statute in *Fabe*, to the extent it placed policyholder claims before the claims of the federal government, dealt with the performance of the insurance contract, it applied to the "business of insurance." Thus, even the three *Perino* factors were fulfilled. This Court held that the Ohio statute was not preempted by the federal priority statute.

Clearly, the analysis of the Court in *National Securities* is alive and well and entirely consistent with the three-prong test set out in *Perino* and the decision in *Royal Drug*. The decision of the Nebraska Supreme Court did not violate these existing precedents — it followed them. The Order was aimed at the

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7. This is an important distinction. Both *Perino and Royal Drug* involved the interpretation of the second clause of §2(b) of the MFA. This section provides an exemption from the anti-trust laws for certain state laws regulating the "business of insurance." As an exemption from the anti-trust laws, it must be narrowly construed. *See Perino*, 458 U.S. at 126 and *Royal Drug*, 440 U.S. at 218. At issue in *National Securities*, *Fabe* and this case is the general exemption of state laws regulating the "business of insurance" from the application of the commerce clause. The narrow construction rule does not apply. *Fabe*, 113 S. Ct. at 2209. The interpretation given the 'business of insurance" under *National Securities* and *Fabe* should be applied in this case.

protection of the policyholders of NAICO. The first prong of *Perino* is met because in protecting the integrity of an insurance company, one is transferring and spreading policyholder risk. Since the Order is aimed at the continued reliability of the insured's policy, it is central to the insurer/insured relationship. Thus the second prong is met. Finally, the Order is limited to entities in the insurance industry (*i.e.*, potential controlling stockholders of insurance companies). Not only is the Nebraska Supreme Court's decision consistent with *National Securities*, it is consistent with the interpretation given *Perino* and *Royal Drug* by this Court in *Fabe*. Petitioners' argument that the Nebraska Supreme Court's decision is contrary to existing Supreme Court precedent on the MFA is simply wrong. The Petition should be denied.

The Petitioners' argument that the Nebraska Supreme Court decision is contrary to existing Supreme Court holdings defining impermissible burdens on interstate commerce is likewise without merit. In *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 90 S. Ct. 844, 25 L. Ed. 2d 174 (1970) this Court addressed whether a state statute outside the insurance context violated the commerce clause. The Court held that the criteria for that determination was:

> Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.

397 U.S. at 142.

In *Pike*, the Court found that the state's interest in having its

name attached to a superior product was minimal and the burden imposed by the statute was significant. In that case, the statute was found to impermissibly burden interstate commerce.

The distinction between this case and *Pike* is clear. The state's interest in *Pike* was weak. The state's interest here is strong. This Court has recognized the important state interest in the regulation of the ownership of insurance companies for the protection of the policyholders. This strong state interest, coupled with the fact that the Order was required based upon unique facts and narrowly crafted to affect only the stock held by Petitioners, shows that the burden imposed was not clearly excessive in relation to the putative local benefits. The Nebraska Supreme Court's decision is not contrary to *Pike*.

In *Edgar v. MITE Corporation*, 457 U.S. 624, 102 S. Ct. 2629, 73 L. Ed. 2d 269 (1982) the court addressed whether an Illinois anti-takeover statute outside the insurance context offended the commerce clause. In that case, the court found that when both a state and a federal statute attempted to regulate the same field, the state statute was void to the extent that it conflicted with the federal statute. A conflict is found if the state law stands as an obstacle to the accomplishment and execution of the federal statute. 457 U.S. at 631. More simply put, does the state statute make compliance with the federal securities laws impossible. In *Edgar*, the court found that the state statute made it impossible to comply with the Williams Act.

The analysis in *Edgar* is inapplicable here. While the Petitioners argue the Order interferes with "the federal securities laws", they fail to identify any federal securities with which it interferes. Indeed, in identifying the federal securities law which is implicated, the Petitioners merely refer to the **entire** Securities Act of 1933, 15 U.S.C. §§ 77a-77zzz and The Securities and Exchange Act of 1934, 15 U.S.C. §§ 78a-78jjj. The Petitioners'

vagueness arises from their litigation position in this case that the Williams Act did not apply to their purchases of Chandler stock in 1992. Indeed, Petitioners made no attempts to comply with the Williams Act. There is no evidence that subjecting Petitioners' sale of Chandler stock to Department approval will contravene any federal securities law. Thus, under the *Edgar* rationale, there is no reason to find the decision to be an impermissible burden on interstate commerce.

The Nebraska Supreme Court conscientiously applied existing Supreme Court precedent to uphold the Order. There is nothing in its decision to merit the granting of a Writ of Certiorari. The Petition should be denied.

B. The Decision of the Nebraska Supreme Court Does Not Usurp Federal Securities Regulation.

Petitioners boldly state: "There is no link between the sale of stock by the Petitioners and a state interest in regulating the 'business of insurance' " in support of their argument that the decision usurps federal securities laws. The Petitioners go on to assert that the decision "marks the first time that any court has held that the business of insurance permits a state insurance regulator to suspend trading" of a corporation's stock. The record clearly reflects, however, that no suspension of trading has occurred — the Petitioners can sell their stock today with Department approval. The Petitioners' argument is overstated.

The decision cannot be reviewed in a vacuum as the Petitioners would have this Court do. The record clearly reflects the nexus between the Order and the "business of insurance." That nexus begins with the Nebraska Insurance Holding Company System Act which charges the Director to approve or disapprove an entity seeking control of a Nebraska insurance company through the ownership of securities. This Court upheld

this interest in *National Securities*. In this case, the nexus continues because Petitioners violated Insurance Department orders and bought stock without prior approval. The Director's jurisdiction to insure a divestiture in a manner to end control by Petitioners is essential. Each action by the Department was done for the purpose of protecting the policyholders of NAICO by insuring that NAICO was controlled only by entities fit to exercise that control. This is undoubtedly the business of insurance. The Nebraska decision ties strongly to the business of insurance.

The decision does not usurp the federal securities laws by "suspending the trading" of Chandler stock. As seen in *Edgar, supra*, the federal securities laws are only in issue if the decision somehow renders compliance impossible. In this case, Petitioners point to no specific federal securities law which the decision contravenes or a single federal securities law with which future compliance is impossible. Moreover, there is no suspension of trading of Chandler stock. The decision does not state that the Petitioners cannot sell their stock. It merely says the Department must approve their purchaser before the sale. In *National Securities* this Court found the Arizona act's provisions permitting insurance department review of the acquisition of control via the purchase of stock for the purpose of protecting the policyholder to be protected by the MFA. Nothing more is implicated here. Since the Petitioners had illegally purchased control of Chandler (and thus NAICO), which control was disapproved, the Department was required to assert continuing jurisdiction over disposition of that stock to ensure that the illegal control did not continue. There has been no order which results in the cessation of trading of Chandler stock. Chandler stock has continued to be publicly traded since July of 1992 when Petitioners attempted to buy control of Chandler.

Petitioners also assert that no other regulator has attempted

to regulate the **seller** of stock as opposed to the **purchaser.** However, the *National Securities* court clearly upheld the regulation of the **purchaser** of stock for the protection of the policyholders. In this case, the illegal purchases of stock by Petitioners necessitated the regulation of their divestiture of stock. The decision does no more than this — it tells a specific seller that it cannot sell to a specific purchaser unless that purchaser has been approved. The distinction Petitioners attempt to draw between regulation of a seller of stock rather than the purchaser of stock is meaningless. The Nebraska decision does not usurp the federal securities laws. It is narrowly tailored to address the particular circumstance before it.

C. Nothing in the *Barnett Bank* Decision Affects the Nebraska Supreme Court's Decision.

Petitioners begin this argument by asserting that there is a distinction between regulating the purchase of a security and the sale of a security. Petitioners imply there is something sacred about the sales transaction but not the purchase transaction. This argument must fail because every sales transaction involves a purchase and every purchase transaction a sale. It is a distinction without a difference. Moreover, this is irrelevant to the analysis in *Barnett Bank of Marion County v. Nelson,* __U.S. __, 116 S. Ct. 1103, __L. Ed. 2d __ (1996).

In *Barnett Bank*, the Court addressed the issue of whether a state law prohibiting a bank's sale of insurance, except in limited circumstances, was preempted by federal law which allowed a national bank to sell insurance. There was no issue in *Barnett Bank* under the first clause of § 1012(b) of the MFA. Rather, the Court's inquiry was directed at the second clause of § 1012(b) which provides that a federal statute may only preempt a state statute if it "specifically relates to the business of insurance."

In making this determination, the *Barnett Bank* court found that the word "relates" was general and should be interpreted broadly. 116 S. Ct. 1111. The federal bank statute specifically included grants of permission for the sale of insurance policies, the collection of premiums and the like. The Court found that the statute directly focused on industry specific selling practices and "affected the relation of insured to insurer and the spreading of risk—matters that this Court, in other contexts, has placed at the core of the McCarren-Ferguson Act's concerns." *Id.* at 1112. The court found that the state act was preempted by the federal act which specifically related to the business of insurance.

The issue before the Nebraska Supreme Court was much different. At issue there was whether the Order related to "the business of insurance" under the first clause of § 1012(b). The Nebraska Supreme Court was not directed to any specific federal securities law by the Petitioners claimed to be impacted by the Department's Order. Thus, *Barnett Bank's* review of whether a federal statute "specifically related to the business of insurance" was not reached. Moreover, the *Barnett Bank* decision adds nothing new to the general analysis of the MFA or commerce clause. *Barnett Bank*, in determining whether the federal statute "related to the business of insurance," applied the same case law analyzed by the Nebraska Supreme Court in its decision. Under general preemption analysis, the Court must first determine that an irreconcilable conflict between a state and federal statute exists. As discussed, above, there is no irreconcilable conflict in this case between the federal securities laws and the decision.

Like its other contentions, the Petitioners' claim that this Court's recent decision in *Barnett Bank* mandates the granting of a Writ of Certiorari is without factual or legal support. *Barnett Bank* did not distinguish, question, or overrule the existing precedent applied by the Nebraska Supreme Court. It provides no basis for the issuance of a Writ of Certiorari.

CONCLUSION

In attempting to convince this Court that a Writ of Certiorari should issue, Petitioners cast a wide net asserting that the decision suspends the trading of a registered security. No reading of the decision can support this broad contention. Rather, the decision was narrowly drawn to address the specific factual circumstances which were before the Court and Director. The decision has no affect on the federal securities laws or the commerce clause. The Petitioners are faced with a narrowly drawn order to right the wrong caused by Petitioners' own actions in an area traditionally left to regulation by the States and are attempting to "make a federal case out of it." This attempt should be rejected.

Respectfully submitted,

KENNETH N. McKINNEY
Counsel of Record
ROBERT L. ROARK
MARY E. NELSON
McKINNEY, STRINGER
& WEBSTER, P.C.
101 North Broadway
Oklahoma City, Oklahoma 73102
(405) 239-6444

WILLIAM M. LAMSON, JR.
MICHAEL DUGAN
KENNEDY, HOLLAND, DELACY
& SVOBODA
Kennedy Holland Building
10306 Regency Parkway Drive
Omaha, Nebraska 68114
(402) 397-7824

Attorneys for Respondents

APPENDIX A — DEPARTMENTAL CORRESPONDENCE DATED JUNE 12, 1987

Departmental Correspondence

Date *June 12, 1987*

Subject *N.A.I.C.O. Investment*

To *Mr. M.J. Moroun* Department _____

From *V.E. Lacca* Department _____

Per your request, attached find a list of the states in which we are in the pools.

Attached also, find the premium schedule for the N.A.I.C.O. fronting program showing the liability program with annual premium of $8,715,620 and the compensation premium of $2,705,203 for a total premium of $11,420,823. Of this amount, $9,250,866 is ceded to Can-Am. The anticipated loss is estimated at $5,000,000 with a run off of about 5 1/2 years until all losses are paid. That would develope [sic] a surplus of $4,250,000 plus investment return on that amount and the $5,000,000 of reserves until it is used up.

By comparison, if we were to purchase insurance coverage, the workers compensation premium based upon 1986 payrolls would be $5,067,161 (see attached schedule) and the liability premium would be approximately $13,000,000 for a total premium of $18,000,000.

From an insurance point of view, the cost savings are a minor point in the decision to invest in N.A.I.C.O.

Appendix A

It is my opinion that regardless of how soft the market gets as to capacity, the cost will not come down from the present levels. There will be only a limited market, if any, available for fronting programs and none of them will allow you to either handle or control your claims. You will be required to put up collateral of about 200% of your estimated losses and cash deposit equivalent to at least three months of expected claims (based on the 200%).

You will be subjected to cancellations, non-renewals and rate increases.

Any advantage gained by use of Can-Am goes down the toilet.

Self insurance is not the solution. As per previous schedules, you cannot meet the financial requirements on some companies and the security and excess coverages will be in excess of what would make the program financially available.

The only way to get out of this problem is to have a controlled or at least influenced fronting company.

If we lock in N.A.I.C.O., we can,

1. Eliminate the problem of being at the mercy of the insurance industry.

2. Continue to enjoy cost savings based upon our good loss ratios.

3. Continue to control our claims and develope [sic] these good loss ratios.

4. Continue to use Liberty Bell and Can-Am at profit centers.

Appendix A

5. Continue to generate surplus at Can-Am to a point where we have the capacity to expand it outward to outside clients.

Without a locked in fronting company, we are back to taking whatever the insurance industry wants to throw out, if anything.

APPENDIX B — LETTER TO DAVID G. McLANE FROM N.E. HARNED AND R.W. LECH DATED JUNE 18, 1992

12225 Stephens
Warren, Michigan 48089-2010

June 18, 1992

David G. McLane, Esq.
Gardere & Wynne
3000 Thanksgiving Tower
Dallas, TX 75201-4761

RE: *Chandler Insurance Company, Inc.*

Dear David:

This letter is written to you in your capacity as officer in charge of keeping the corporate records of Chandler Insurance Co., Ltd. ("Company").

We hereby request that you provide us with a copy of the shareholder list of the Company, as we have received in the past, arranged in alphabetical order and showing the address of each shareholder and the number of shares of each class of shares registered in the name of each shareholder. The last shareholder list we have is dated March 22, 1991.

Additionally, we request the names, addresses and both business and home telephone numbers of each member of the board of directors of the Company for our records.

This information should be forwarded to us by facsimile transmission and by mail as soon as possible.

Appendix B

We have also copied the Company directly with respect to this letter. In the event that you are not the proper officer of the Company to whom this request should be addressed, we hereby request, by such copy of this letter, that the proper officer of the Company provide us with the requested information and we ask that you, in your capacities as an officer of and attorney for the Company, see that this request is properly complied with.

s/ N.E. Harned
N.E. Harned, Director

s/ R.W. Lech
R.W. Lech, Director or
Conditionally Elected Director

cc: Chandler Insurance Company, Ltd.
Attn: Benjamin Walkingstick
Brent LaGere
Mark Paden

APPENDIX C — LETTER TO JEANETTE SMITH FROM HANS H.J. PIJLS DATED JUNE 24, 1992

PLUNKETT & COONEY Professional Corporation
Attorneys and Counsellors at Law

900 Marquette Building
Detroit, MI 48226-3260

(313) 965-3900
Fax (313) 961-0029

June 24, 1992

VIA TELEFAX

Jeanette Smith, Esquire
General Counsel
Nebraska Department of Insurance
941 "O" Street, Suite 400
Lincoln, NB [sic] 68508

Dear Ms. Smith:

This office represents a client who currently owns 20-30% of the stock of a corporation which, in turn, through various subsidiaries, is a 100% owner of a Nebraska insurance company. Our client is contemplating the possibility of expanding its shareholding in the ultimate parent, and would like to know whether, in order to do so, it needs to satisfy any requirements of the Nebraska Insurance Company Holding Act. Specifically, the client would like to know what requirements, if any, it has met in the past, according to the records of the Department, and what additional requirements the company would need to meet in view of the past record.

In order to properly advise our client, we would appreciate receiving your written opinion in this regard.

Ms. Smith, thank you very much for your assistance in this matter.

Appendix C

Very truly yours,

Hans H.J. Pijls
Direct Dial: (313) 983-4846

HHJP/rjd

APPENDIX D — LETTER TO JEANETTE M. SMITH FROM J. MICHAEL GOTTSCHALK DATED JUNE 29, 1992

KUTAK ROCK
A Partnership
Including Professional Corporations
THE OMAHA BUILDING
1650 FARNAM STREET
OMAHA, NEBRASKA 58102-2185

(402) 346-6000
FACSIMILE (402) 346-1148

June 29, 1992

VIA FACSIMILE

Jeanette M. Smith, Esq.
General Counsel
Nebraska Department of Insurance
Suite 400
Terminal Building
941 O Street
Lincoln, NE 68508

Dear Ms. Smith:

As we briefly discussed during our telephone conference last Friday morning, CenTra Inc. has engaged our firm in conjunction with several matters arising from its partial ownership of Chandler Insurance Company, Ltd., the holding company of National American Insurance Company.

Michael E. Thoits, Esq., CenTra's principal counsel for this

matter, provided me with a copy of the June 24, 1992 letter you received from Hans H.J. Pijls of his firm. More important, after you and I spoke by telephone, Mr. Thoits confirmed that CenTra's only present request is for your assistance in obtaining copies of the Department's records with respect to CenTra itself and its subsidiaries National Transport Indemnity, Inc.

Specifically, CenTra's present management believe that several years ago it or one of its subsidiaries submitted a statement ("Statement") pursuant to Neb. Rev. Stat. § 44-2105 (Reissue 1988), the predecessor of Neb. Rev. Stat. § 44-2126 (1991 Supp.). This Statement apparently was submitted in conjunction with National American's merger into a Chandler subsidiary. It also appears the Department took affirmative action on the Statement by approving the contemplated transaction. CenTra presently requests only copies of this Statement and any attachments, and the Department's written action with respect to the Statement (and, if separate, with respect to the transaction which was the subject of the Statement).

CenTra acknowledges the obligations imposed upon the Department by Neb. Rev. Stat. § 44-2138 (1991 Supp.). The very limited documents it now seeks, however, do not appear to have been "disclosed to the Director . . . in the course of an examination or investigation . . . [or] reported pursuant to sections 44-2132 to 44-2136," nor otherwise to be within the intended purview of the records confidentiality statute.

CenTra likewise acknowledges the requested documents might be obtained either from Chandler or National American, or perhaps located through a more intensive search of its own stored files. Our client believes it is important to confirm the present

state of the Department's records, however, particularly to assure that any further action it may take with respect to its interest in Chandler is in full compliance with Nebraska law.

Thank you very much for your assistance with respect to CenTra's request. If you have any further questions regarding this matter, or require any additional information to locate and provide the limited records CenTra seeks, please call me.

Very truly yours,

s/ J. Michael Gottschalk
J. Michael Gottschalk

caa-m

cc: Michael E. Thoits, Esq.

APPENDIX E — LETTER TO MR. BRENT LaGERE FROM R.W. LECH DATED JULY 1, 1992

CENTRA, INC.
12225 STEPHENS ROAD
WARREN, MI 48089

July 1, 1992

W. Brent LaGere
Chairman and Chief
Executive Officer
1010 Manvel Avenue
Chandler, Oklahoma 74834

Dear Mr. LaGere:

This constitutes our offer to purchase from Chandler (U.S.A.), Inc., its parents, subsidiaries or affiliates, all of the shares of Chandler Insurance Co. Ltd. held as pledgee of Universal Insurance Group (approximately 400,000 shares) and as pledgee of Cal-Tex Group (approximately 170,000 shares) for the purchase price of $7.50 per share, payable in cash within five (5) days of acceptance of this offer.

Please let us hear from you. By copy of this letter, we are notifying each of the pledgors of this offer as it is our understanding that they are entitled to receive the benefits of this offer.

Very truly yours,

CENTRA, INC.

By: s/ R.W. Lech
Its: Executive Vice President

cc: Bruce S.D. Putterill

APPENDIX F — LETTER TO CHANDLER (U.S.A.), INC. ATTN: MR. BRENT LAGERE FROM R.W. LECH DATED JULY 2, 1992

CenTra, Inc.
12225 Stephens Road
Warren, Michigan 48089

July 2, 1992

VIA MAIL AND TELECOPIER — (405) 258-0175

Chandler (U.S.A.), Inc.
P.O. Drawer 9
Chandler, Oklahoma 74834

Attn: Mr. Brent LaGere

Re: Chandler Insurance Company, Ltd.

Gentlemen:

This constitutes our offer to purchase from Chandler (U.S.A.), Inc. the approximately 567,350 shares of Chandler Insurance Company, Ltd. owned by Chandler (U.S.A.), Inc. for the purchase price of $7.50 per share, payable in cash within five business days after receipt of your written acceptance of this offer.

We understand that the total number of shares owned by you is 567,350. If our understanding as to the total number of shares owned by you is incorrect, this offer will continue to apply to the total amount of shares in Chandler Insurance Company, Ltd. owned by you (up to but not exceeding 600,000 shares).

Appendix F

Please respond as to your acceptance or rejection of this offer in writing. This offer will remain open until withdrawn by us in writing (even if rejected by you).

CENTRA, INC.

By: s/ R.W. Lech
R.W. Lech, Executive Vice President

xc: Mr. Bruce S.D. Putterill

APPENDIX G — LETTER TO NATIONAL AMERICAN INSURANCE COMPANY ATTN: MR. BRENT LaGERE FROM R. W. LECH DATED JULY 2, 1992

CenTra, Inc.
12225 Stephens Road
Warren, Michigan 48089

July 2, 1992

VIA MAIL AND TELECOPIER — (405) 258-0175

National American Insurance Company
c/o Chandler (U.S.A.), Inc.
P.O. Drawer 9
Chandler, Oklahoma 74834

Attn: Mr. Brent LaGere

Re: Chandler Insurance Company, Ltd.

Gentlemen:

We understand that you are or may be the beneficiary of a pledge of shares in Chandler Insurance Company, Ltd. On July 01, 1992, an offer to purchase those shares was made by us. A copy of our offer is attached hereto.

This letter confirms that our offer remains outstanding and will remain outstanding until withdrawn in writing by us (even if rejected by you). We ask that our offer be accepted in writing.

Appendix G

CENTRA, INC.

By: s/ R.W. Lech
R.W. Lech, Executive Vice President

xc: Mr. Bruce S.D. Putterill
Universal Insurance Services
Cal-Tex

APPENDIX H — PRESS RELEASE DATED JULY 6, 1992

JUL-6-92 MON 12:56 SN OPERATION ROWENA
FAX NO. 4058404171 P.02

NEWS CODE S ENTRY CHANF DATE 12:43 PM FRWD
PAGE 1 OF 2

1 07/06 CENTRA MAY BUY 169,858 SHARES OF CHANDLER INSUR FROM HOLDER DJ

WASHINGTON -DJ- CENTRA INC., WHICH PREVIOUSLY SAID IT OPPOSES A PROPOSED MANAGEMENT BUY-OUT OF THE CHANDLER INSURANCE CO. (CHANF), SAID THAT A CHANDLER SHAREHOLDER HAS INDICATED THAT IT IS WILLING TO SELL CENTRA 169,858 CHANDLER SHARES.

AS REPORTED, CENTRA, WHICH HOLDS A 21.8% STAKE IN THE COMPANY, SAID THAT IT MIGHT BUY MORE SHARES IN AN EFFORT TO INFLUENCE THE COMPANY'S MANAGEMENT AND BOARD. CENTRA OFFERED ON JULY 1 TO PURCHASE ABOUT 570,000 CHANDLER INSURANCE SHARES HELD BY THE COMPANY OR ITS SUBSIDIARIES FOR $7.50 A SHARE. CHANDLER REJECTED THAT OFFER AND SAID SUCH PURCHASES WOULD VIOLATE AN EXISTING CONTRACTUAL AGREEMENT WITH THIRD PARTIES.

IN A FILING WITH THE SECURITIES AND EXCHANGE COMMISSION, CENTRA SAID THAT ALTHOUGH THE COMPANY DECLINED TO SELL IT THE ABOUT 570,000 SHARES, CACTUS SOUTHWEST CORP., ONE OF THE ACTUAL OWNERS OF 169,853 SHARES, HAS "INDICATED ITS WILLINGNESS" TO SELL THE SHARES TO CENTRA.

Appendix H

THE FILING INDICATED THAT A TENTATIVE UNDERSTANDING HAS BEEN REACHED BUT NO AGREEMENT HAS BEEN EXECUTED AND THAT THE UNDERSTANDING CALLS FOR THE PURCHASE OF THE SHARES AT $7.50 PER SHARE.

CENTRA SAID THAT ON JULY 2 IT MADE AN OFFER TO CHANDLER (U.S.A.) INC., A

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1 07/06 CENTRA MAY BUY 169,858 SHARES OF CHANDLER INSUR FROM HOLDER DJ UNIT OF THE COMPANY, TO PURCHASE ABOUT 567,350 OTHER SHARES OF CHANDLER FOR $7.50 A SHARE. NO REPLY HAS BEEN RECEIVED, CENTRA SAID.

APPENDIX I — LETTER TO J. MICHAEL GOTTSCHALK FROM JEANETTE M. SMITH DATED JUNE 30, 1992

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE
William H. McCartney
Director

E. Benjamin Nelson
Governor

June 30, 1992

Mr. J. Michael Gottschalk
Kutak Rock
1550 Farnam Street
Omaha, NE 68102

Dear Mr. Gottschalk:

I have reviewed your letter and the relevant files in light of Neb. Rev. Stat. § 44-2138. The Department's position is that holding company files are not public records. However, to the extent that an order is entered by the Director pursuant to the Holding Company Act, that order would be a public record. Upon review, there has been no order entered approving a Form A filing by CenTra regarding acquisition of control of National American Insurance Company.

As I explained to Hans Pijls over the telephone, generally if an entity or individual which currently owns 20-30% of the stock of the corporation which in turn through subsidiaries is a 100% owner of a Nebraska insurance company and it wishes to expand its shareholdings, Nebraska filing requirements would depend upon prior historical filings with us. Since there is no order approving a Form A filing, any expansion of CenTra's current holdings would require either a Form A (§44-2126) or a

disclaimer of control rebutting the presumption (§44-2132(11)) filed with the Department for approval prior to the new proposed transaction occurring. Control is presumed to exist if any person directly or indirectly holds 10% of the voting securities of any other person. See Neb. Rev. Stat. § 44-2121(2).

If a Form A had been filed, the Department would have entered an order approving the acquisition of control. Under that hypothetical scenario, if the entity subsequently expanded its holdings from 20% to 99% of the corporation it would make no difference and would not necessitate any further approval since the acquisition of control had received approval.

Perhaps we have a different interpretation of the confidentiality statute specifically contained in the Holding Company Act located at Neb. Rev. Stat. § 44-2138. The section which I feel is pertinent is the language which states ". . . and all information reported pursuant to Sections 44-2132 to 44-2136 shall be given confidential treatment . . . " The information which your client seeks, is arguably the information which was reported to the Department as required by the Holding Company Act. I trust the general information which I have stated in this letter will be of benefit and will hopefully answer Mr. Pijl's original questions. To the extent that specific information is required, I again suggest that your client contact National American Insurance Company. If you'd like to discuss further please give me a call.

Sincerely,

s/ Jeanette M. Smith
JEANETTE M. SMITH
General Counsel

JMS:mkr

cc: Hans Pijls

APPENDIX J — ORDER AND NOTICE OF HEARING FILED JULY 10, 1992 WITH EXHIBITS ATTACHED

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

C-755

IN THE MATTER OF ACQUISITION OF NATIONAL AMERICAN INSURANCE COMPANY, BY CENTRA, INC.

ORDER TO CEASE AND DESIST AND NOTICE OF HEARING ON APPLICATION TO ACQUIRE NATIONAL AMERICAN INSURANCE COMPANY

TO: CenTra, Inc., its affiliates and R. W. Lech, M. J. Moroun and Norman E. Harned, individuals.

The Director of the Nebraska Department of Insurance and his duly authorized Deputy are charged with the duty and power to enforce and execute all the insurance laws of this State which include Neb.Rev.Stat. §§44-2120 through 44-2153 (Nebraska Insurance Holding Company Act).

On July 9 , 1992 , CenTra, Inc ., a Delaware corporation, filed an application pursuant to Neb.Rev.Stat. §44-2126 to acquire control of National American Insurance Company (NAICO), a Nebraska domestic insurer.

Since that time, the Director of Insurance, by and through its Deputy, Robert G. Lange, has reasonable cause to believe that CenTra, Inc., by and through its officers and directors and/or its affiliates (hereafter CenTra) are attempting to immediately acquire control of NAICO in violation of Neb.Rev.Stat. §44-2126 in that CenTra has failed to obtain prior approval of the

acquisition of NAICO from the Director. The Director has reasonable cause to believe such acquisition or attempted acquisition has or is occuring based upon the following:

(l) Attached as exhibit 1, an affidavit of R. Patrick Gilmore, Assistant Secretary and General Counsel to NAICO attesting on his information and belief that CenTra has acquired or is in the process of acquiring additional holdings of Chandler Insurance Company, Ltd. of the Caymen [sic] Islands (Caymen) [sic] which is the ultimate controlling person of a Nebraska domestic insurance company, National American Insurance Company (NAICO).

(2) CenTra has not received prior written approval from the Director to acquire or attempt to acquire additional holdings as is required under the Nebraska Insurance Holding Company System Act (Neb.Rev.Stat. §44-2120 et sec.).

(3) On July 7, 1992, the Department issued a letter, attached as exhibit #2, ordering CenTra to immediately cease and desist from engaging in any further conduct that constitute the making of a tender offer, invitation for a tender offer, the entering into any agreement or any attempt whatsoever to acquire stock of Chandler Insurance Company, Ltd. of the Caymen [sic] Islands unless and until CenTra has filed a Form A with the Director pursuant to §44-2126(1) and the Director has approved such acquisition following a public hearing as required under §44-2127.

(4) On July 8, 1992, the Department reaffirmed its

position that CenTra should immediately cease and desist from such activity until a Form A has been filed and approved by the Director as set forth in exhibit #3, a copy of which is attached hereto.

(5) A Form A filing was filed with the Department on July 9, 1992. There has been no approval of the Form A filing at this time. A public hearing has been set for August 6, 1992, to consider the matter pursuant Neb.Rev.Stat. §44-2127.

(6) That the aforementioned facts constitute violations of the Nebraska Insurance Holding Company System Act and fall within the purview of the Department's authority to exercise its powers and to protect residents and policyholders of this State.

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED that CenTra, Inc., its officers and directors, and its affiliates, are hereby ordered to immediately CEASE AND DESIST from any and all attempts to acquire or purchase, conditionally, or otherwise, directly by CenTra or indirectly by its affiliates, or in any other manner acquire or attempt to acquire control of NAICO until the Director has approved the matter as required by law.

Dated this 10 day of July, 1992.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

s/ Robert G. Lange
BY: ROBERT G. LANGE
DEPUTY DIRECTOR

Appendix J

NOTICE OF HEARING

You are hereby notified that the Nebraska Department of Insurance shall conduct a public hearing pursuant to Nebraska Revised Statutes §44-2127 on the application of CenTra, Inc. to acquire control of National American Insurance Company, a Nebraska domestic insurer. Said hearing will be held at the offices of the Nebraska Department of Insurance, Terminal Building, 941 "O" Street, Suite 400, Lower Level Conference Room, on Thursday, August 6, 1992, at 9:00 a.m. and shall continue until concluded.

Dated this 10 day of July , 1992.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

s/ Robert G. Lange
BY: ROBERT G. LANGE
DEPUTY DIRECTOR

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order to Cease and Desist and Notice of Hearing on Application to Acquire National American Insurance Company was served upon the following persons by facsimile and certified mail, return receipt requested, on this 10 day of July, 1992:

R. W. Lech
M. J. Moroun
Norman E. Harned
CenTra, Inc.
1225 Stephens
Warren, MI 48089-2010

Appendix J

Michael E. Thoits, Esq.
Plunkett & Cooney
900 Marquette Building
Detroit, MI 48226-3260

J. Michael Gottschalk, Esq.
Kutak Rock
1650 Farnam Street
Omaha, NE 68102

s/ Susan Kuzelka

[handwritten]
7-13-92
Copy hand delivered to Pat Gilmore,
General Counsel for Nat'l American

Appendix J

EXHIBIT 1

AFFIDAVIT

The undersigned, being first duly sworn upon oath, deposes and states as follows:

1. That he is of lawful age and that his name is R. Patrick Gilmore, one and the same person as Robert Patrick Gilmore, Robert P. Gilmore or "Pat" Gilmore.

2. That he is Assistant Secretary of and General Counsel to the following corporations which are subject to the Insurance Holding Company System Act (the ACT) of the State of Nebraska:

Chandler (U.S.A.), Inc., an Oklahoma corporation (CHANDLER U.S.A.)

National American Insurance Company, a Nebraska Corporation (NAICO)

3. That he is an attorney at law duly licensed to practice law in the State of Oklahoma and is counsel to the following corporations which are subject to the ACT:

Chandler Insurance Company, Ltd., a Cayman Islands Corporation (CHANDLER CAYMAN)

Chandler Insurance (Barbados), Ltd. (CHANDLER BARBADOS)

4. That the following facts are true according to the books and records of the corporations named below:

Appendix J

(a) NAICO is a wholly owned subsidiary of CHANDLER U.S.A.

(b) CHANDLER U.S.A. is a wholly owned subsidiary of CHANDLER BARBADOS

(c) CHANDLER BARBADOS is a wholly owned subsidiary of CHANDLER CAYMAN

(d) CHANDLER CAYMAN is a publicly traded company

5. That the current members of the Board of Directors of NAICO are:

Brent LaGere
Benjamin T. Walkingstick
Robert A. Anderson
Michael J. Dugan
James M. Jacoby
Ronald W. Lech
W. Tim Runyan

6. That the current members of the Board of Directors of CHANDLER CAYMAN are:

Brenda B. Pair
W. Brent LaGere
Richard L. Evans
Norman E. Harned
L. Keith Price
Benjamin T. Walkingstick
Robert L. Rice

Appendix J

Paul A. Maestri
Mark T. Paden
M. J. Moroun
Ronald W. Lech

7. That M. J. Moroun, Ronald W. Lech and Norman E. Harned are officers and/or employees of CenTra, Inc. which together with affiliates owns 22.7% of the outstanding capital stock of CHANDLER CAYMAN. After July 1, 1992, CenTra, Inc. negotiated to purchase stock of CHANDLER CAYMAN amounting to approximately 8% of the outstanding stock at $7.50 per share.

8. That on July 9, 1992, Windsor Acquisition Corp., an Oklahoma corporation (WINDSOR) announced its intention to purchase all of the outstanding capital stock of CHANDLER CAYMAN at a price of $6.50 per share subject to certain conditions. (The TENDER OFFER)

9. That WINDSOR is a wholly owned subsidiary of CHANDLER BARBADOS and thus is a part of the same holding company system. The undersigned is President of WINDSOR.

10. That on July 9, 1992, the Board of Directors of CHANDLER CAYMAN met at a special meeting at Windsor, Ontario, Canada for the purpose of discussing the TENDER OFFER.

11. CenTra, Inc. (and specifically, Mr. Lech) had been ordered by the Nebraska Insurance Department on July 7, 1992, to "immediately Cease and Desist from engaging in any further conduct that would constitute . . . any attempt whatsoever to acquire stock of NAICO unless and until CenTra has filed a Form

A with the Director . . . and the Director has approved such acquisition following a public hearing . . ."

12. That at the CHANDLER CAYMAN Board Meeting held on July 9, 1992, Mr. Lech (who is a director of both CHANDLER CAYMAN and NAICO) acknowledged his awareness of the order and made the following statements:

(a) That as soon as the Form A and a Disclaimer was filed his group intended to purchase CHANDLER CAYMAN stock on the open market to acquire control of CHANDLER CAYMAN.

(b) That a close friend of Mr. Lech's who is an officer of National Indemnity Insurance Company would manage NAICO.

(c) That Deputy Insurance Commissioner, Robert Lange, had given his group permission to commence the purchase of CHANDLER CAYMAN stock upon the filing of a Form A statement with an accompanying disclaimer.

13. That during the course of the Board Meeting a telecopy transmission intended for Mr. Harned was mistakenly delivered to the undersigned. The telecopy was from an office of the Dean Witter Brokerage Firm and appeared to be a request for approval of a press release purporting to state, inter alia, that the Nebraska Insurance Department had asked CenTra to refrain from dealing in the Chandler Cayman stock. The release appeared to be a paraphrase of an earlier release by WINDSOR stating that the Nebraska Insurance Department had ordered CenTra to cease dealing in such stock. The telecopy also contained certain stock market information.

14. Subsequent to the adjournment of the Board Meeting,

the undersigned also observed a second telecopy transmission from the same brokerage firm being delivered to Mr. Harned at approximately 1:00 p.m. E.D.T.

15. At approximately 3:45 C.D.T., the undersigned was informed that large blocks of stock of CHANDLER CAYMAN had been purchased on the open market for in excess of $6.50 per share. Prior to July 9, 1992, such stock had not traded for a price in excess of $6.00 per share for at least six (6) months.

16. The undersigned has been informed and states upon information and belief that throughout the entire day of July 9, 1992, the Dean Witter Brokerage Firm was trading in the CHANDLER CAYMAN stock upon the instructions of Messrs. Moroun, Lech and Harned and that after adjournment of the CHANDLER CAYMAN Board Meeting began to purchase the stock at a price of more than $6.50 per share. It appears that approximately 208,000 shares traded at more than $6.50 per share after 2:00 p.m. C.D.T. and that most, if not all of such stock was purchased by the Dean Witter Brokerage Firm.

17. That subsequent to the issuance of the Department's order of July 7, 1992, and after notice of such order had been delivered to Mr. Lech, and at the very time that Mr. Lech was meeting with Robert Lange in Lincoln, Nebraska, on July 8, 1992, the CenTra Group continued to negotiate with the Cactus Southwest group for the purchase of 169,858 shares of CHANDLER CAYMAN stock and was requesting the execution of a document by Cactus Southwest committing to sell such stock to the CenTra Group.

18. That the actions of Mr. Moroun, Mr. Lech and Mr. Harned described above have as their purpose influencing the

management and control of NAICO. That the acquisitions made on July 9, 1992, have greatly enhanced Mr. Moroun's, Mr. Lech's and Mr. Harned's ability to control NAICO.

Dated, subscribed and sworn to this 10th day of July, 1992.

s/ R. Patrick Gilmore
R. Patrick Gilmore

STATE OF NEBRASKA)
) ss
COUNTY OF LANCASTER)

Subscribed and sworn to before me this 10th day of July, 1992, by R. Patrick Gilmore.

s/ Helen E. Griffin
Notary Public

My Comm. Expires:

2-8-95

(SEAL)

Appendix J

EXHIBIT 2

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE
William H. McCartney
Director

E. Benjamin Nelson
Governor

July 7, 1992

FACSIMILE
CERTIFIED: RETURN RECEIPT REQUESTED

Mr. R. W. Lech
Executive Vice-President
CenTra, Inc.
12225 Stephens Road
Warren, MI 48089

Dear Mr. Lech:

Information and evidence made available to the Department of Insurance indicates that CenTra, Inc. is pursuing steps to immediately increase its holdings of a Nebraska domestic insurance company, National American Insurance Company (NAICO). However, such attempt to acquire NAICO disregards the requirements of the Nebraska Holding Company Systems Act, specifically Neb.Rev.Stat. §44-2126(1). That provision prohibits any person other than the issuer to make a tender offer for, or otherwise seek to acquire any voting security of a domestic insurer where such person would by exercise of any right to acquire, be in control of such an insurer unless such offer

first has been approved by the Director. As a prerequisite to approval, a Form A filing must be submitted to the Director in accordance with Chapter 24, Nebraska Administrative Code, §019. Control is presumed where ownership exceeds 10% of voting stock in one person unless a disclaimer of control is filed with the Department.

According to Department holding company records, CenTra and its affiliates own approximately 22.53% of the total issued and outstanding common stock of Chandler Insurance Company, Ltd., the ultimate controlling person of NAICO. Our records further indicate that a disclaimer of control over NAICO was filed by CenTra in approximately February, 1989. A Form A filing has not been submitted to this Department by CenTra since that time.

To the best of our knowledge and belief CenTra nevertheless is attempting to acquire control over NAICO without approval of such acquisition first having been granted by the Director. The evidence available to the Department indicating such attempted acquisition includes the following documents:

1. Letter to Mr. Brent LaGere dated July 1, 1992 wherein CenTra offers to purchase from Chandler (U.S.A.), Inc., all the shares of Chandler Insurance Company, Ltd.;

2. Letter to Mr. Brent LaGere dated July 2, 1992 wherein CenTra, Inc. again offers to purchase from Chandler (U.S.A.), Inc. approximately 567,050 shares of stock of Chandler Insurance Company, Ltd. which is owned by Chandler (U.S.A.), Inc., constituting the total number of shares owned by Chandler (U.S.A.), Inc.;

Appendix J

3. Press release dated July 6, 12:43 p.m. evidencing a proposal to buy 169,858 shares from Cactus Southwest Corp.; and

4. Schedule 13D filing made with the Securities and Exchange Commission on July 1, 1992, summarizing the above proposals.

Please be advised that any attempt to increase its holdings over NAICO without filing a Form A with the Department upon which the Director must give approval thereto is in violation of Nebraska Insurance Code, §§44-2126(1) and 44-2129(2). Consequently, the Director is hereby ordering CenTra, Inc. to immedately CEASE and DESIST from engaging in any further conduct that would constitute the making of a tender offer, invitation for a tender offer, the entering into any agreement or any attempt whatsoever to acquire stock of NAICO unless and until CenTra has filed a Form A with the Director pursuant to §44-2126(1) and the Director has approved such acquisition following a public hearing as required under §44-2127.

The Department is prepared to apply to the District Court of Lancaster County, Nebraska to enjoin CenTra, Inc. from any further acquisition attempts over NAICO and to prevent CenTra, Inc. from continuing to violate the Holding Company Systems Act. See §44-2140. The Department is also prepared to seek imposition of monetary penalties against any officer or agent in his individual capacity, to the extent necessary to enforce compliance with the Nebraska Holding Company Systems Act.

Appendix J

Sincerely,

s/ Robert G. Lange
ROBERT G. LANGE
Deputy Director

RGL:mkr

cc: Jeanette Smith
Ann Frohman

Appendix J

EXHIBIT 3

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE
William H. McCartney
Director

E. Benjamin Nelson
Governor

July 8, 1992

FACSIMILE
U.S. MAIL

Mr. R. W. Lech
Executive Vice-President
CenTra, Inc.
12225 Stephens Road
Warren, MI 48089

Dear Mr. Lech:

This letter serves to follow-up our meeting yesterday and to correct a statement in my letter to you dated July 7, 1992. We concluded the meeting with an understanding that CenTra will be filing a Form A as soon as possible. The Department will review the filing and will then advise you of a hearing date on the matter. The hearing will be held at the Nebraska Insurance Department in approximately 30 days after receipt of the filing.

On a related matter, there was an erroneous reference on the second page of my July 7th letter regarding CenTra Inc.'s acquisition of "stock of NAICO," which is not technically

accurate. For further clarification, the conduct to which I was referring throughout that letter as conduct which violates Nebraska's Holding Company Systems Act and therefore should immediately cease until a Form A has been filed and approved by the Director, centers not on CenTra's efforts to acquire stock of NAICO but pertains to CenTra's efforts to acquire the stock of Chandler Insurance Company Ltd., which the Department understands is the ultimate controlling person of National American Insurance Company.

Sincerely,

s/ Robert G. Lange
ROBERT G. LANGE
Deputy Director

cc: Jeanette Smith
Ann Frohman

APPENDIX K — CERTIFICATE OF INCORPORATION

IBC 01

Commonwealth of The Bahamas

The International Business Companies Act 1990

Certificate of Incorporation
(Section 11 and 12)

No. 10,119B CAN-AM INVESTMENTS LIMITED

I, SHANE MILLER Assistant *Registrar General of the Commonwealth of The Bahamas Do Hereby Certify pursuant to the International Business Companies Act (No. 2 of 1990) that all the requirements of the said Act in respect of incorporation have been satisfied, and that*

CAN-AM INVESTMENTS LIMITED

is incorporated in the Commonwealth of The Bahamas as an International Business Company this 14th *day of* July 1992

Given under my hand and seal at Nassau in the Commonwealth of The Bahamas

s/ Shane Miller
ASSISTANT REGISTRAR GENERAL